IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.419 OF 2006

Exposure Insurance Services Ltd. ..Petitioner.

Vs.

M/s. Larsen & Toubro Ltd. ..Respondent.

....

Mr. Punit B. Anand for the Petitioner.

Mr. Ravi Kadam, Advocate General with Mr. P.A. Sawant, Mr. Vikram Trivedi, Ms. Nita Gaglani, Mr. Anurag Gokhale, Mr. Mayur Bhojwani i/b M.K. Ambalal & Co. for the Respondent.

...

CORAM: **DR. D.Y. CHANDRACHUD, J.**

21st March, 2007.

P.C. :

1. The Petitioner claims to be the holder in due course of two bills of exchange dated 15th December, 2002 in the amount of US $ 2,165,000. The endorsement in favour of the Petitioner is alleged to be dated 28th January, 2003. The bills of exchange were payable on 15th March, 2003. Certain goods were supplied by a company by the name of Sky Impex Limited to the Respondent. The claim of the Petitioner is on the strength of the endorsement alleged to have been made in favour of the Petitioner and the

Petitioner claims thereunder as a holder in due course.

2. The defence to the Company Petition is that the claim is fraudulent and nothing is payable under the two bills of exchange. The supplier had issued two credit notes on 27th February, 2003 to the Petitioner confirming that the goods supplied to the Respondent had been received back by the supplier at Dubai and that consequently no outstandings were due by the company against the invoices and the bills of exchange. Though the bills of exchange were due and payable on 15th March, 2003, there was no presentation for a period of two years after the date of maturity until on 4th February, 2005, a notice was issued by an advocate on behalf of a U.K. Based company by the name of Carbon Technologies Limited. The company submitted its reply to the notice on 7th March, 2005. The notice was withdrawn by the advocate with the following statement :

> "With regard to the said notice and your aforesaid reply, our client has instructed us to state that due to documentary confusion in the management of our client, apparently a mistake was made in believing that the said bills forming the subject matter of the notices and your reply were endorsed to our client. But later it was

> realized that the said bills pertain to another acceptor. Hence, our client has instructed us to withdraw the notice issued by us to your client and therefore the same stands withdrawn."

3. Thereafter on 29th March, 2005 a second notice was issued by an advocate on behalf of a company by the name of Buxley Industries Limited, purportedly registered in Jersey claiming on the basis of the same bills of exchange. That notice has not been withdrawn until date. Finally, on 13th February, 2006 the Petitioner addressed a notice to the Respondent which forms the subject matter of the Company Petition. Significantly a comparison of the notice dated 13th February, 2006 (Exh. G to the Company Petition) with the first notice dated 4th February, 2005 issued on behalf of Carbon Technologies Limited (Exh. C to the affidavit in reply) will show that the material averments contained in the two notices are virtually identical even to the extent of incorporating the same punctuation marks.

4. In these circumstances, the defence of the company that the goods were returned to the original suppliers who had

issued credit notes and that the claim that has been now set up in the Company Petition is vitiated by fraud cannot be brushed aside. It cannot be said that there is a debt due and payable and a certain sum of money is due and payable to the Petitioner. Photocopies of the two bills of exchange have been produced before the Court and it has been submitted that the endorsement in favour of the Petitioner on the reverse of the bills of exchange is ex facie, even upon a bare perusal, forged. These are obviously disputed questions which will have to be addressed on the basis of evidence at the trial of a suit. Suffice to state, that no case for the exercise of the jurisdiction for winding up is made out. That apart, the attention of the Court has also been drawn to the financial status of the Respondent and the following averment in that regard is contained in paragraph 3(c) of the affidavit in reply :

> "The reserves of the Respondent are to the tune of Rs.4613 Crores and the assets employed are to the tune of Rs.6094 Crores. The sales and other income of the Respondent was Rs.13748.26 Crores in the year 2004-05 and have increased to Rs.15198.63 Crores in 2005-06. The Respondent had made a profit before tax and extraordinary items of Rs.1286.14 Crores in the year 2004-2005, which has increased to Rs.1313.65 Crores in the year 2005-2006. This Respondent's net worth in the year 2005-06 was Rs.4640 Crores and its General

Reserves for the year 2005-2006 is Rs.2496 Crores."

Therefore considered from any perspective, this is an appropriate case where the Petitioner must be relegated to the remedy of establishing its claim in a civil suit before an appropriate Court of jurisdiction. The Company Petition is accordingly dismissed.